

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:17-CR-134-FL-1

UNITED STATES OF AMERICA,)	
)	
v.)	
)	<u>ORDER</u>
FRANK GILES MCCREE,)	
)	
Defendant.)	

This matter came before the court on January 16, 2019, for a hearing on Defendant's mental competency in accordance with 18 U.S.C. §§ 4241 and 4247(d).

I.

On February 9, 2018, upon motion by Defendant, the court ordered that Defendant undergo a psychiatric or psychological examination pursuant to 18 U.S.C. § 4247(b) in order to determine whether he is presently suffering from a mental disease or defect rendering him mentally incompetent. [DE-31]. The court directed that Defendant's evaluation would determine whether Defendant understands the nature and consequences of the proceedings against him and whether he can properly assist in his defense. *Id.* The court directed further that evaluation to determine, at the time of the alleged offenses, whether Defendant appreciated the criminality of the alleged actions and/or was capable of conforming his behavior to the law. *Id.*; see 18 U.S.C. § 4242. Defendant was subsequently designated to the Metropolitan Correctional Center (MCC) Chicago, Illinois for evaluation on February 13, 2018 and arrived at the facility for evaluation March 5, 2018. Defendant was evaluated by David M. Szyhowski, Psy.D, ("Dr. Szyhowski") a licensed clinical psychologist and Forensic Studies Unit Psychologist at the Federal Bureau of Prisons MCC- Chicago, Illinois. Dr. Szyhowski prepared a Forensic Report ("Forensic Report")

of his evaluation of Defendant, dated June 15, 2018, which has been filed under seal and served on counsel as provided by 18 U.S.C. § 4247 prior to the hearing.

II.

At the hearing before the court, the government was represented by Assistant United States Attorney James Kurosad and Defendant, who was present in the courtroom, was represented by Michael Fitzpatrick. The court advised Defendant of his rights under 18 U.S.C. § 4247(d) which Defendant indicated he understood. The government then referred to Dr. Szyhowski's Forensic Report.

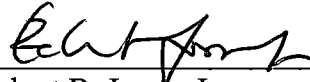
According to the Forensic Report, Defendant has been diagnosed with Antisocial Personality Disorder and Delusional Disorder. Despite these disorders, however, it is the opinion of Dr. Szyhowski that Defendant has a sound factual and rational understanding of his current legal proceedings and has a firm grasp on the concept of working cooperatively with an attorney. According to the Forensic Report, Defendant does not appear to be suffering from any severe mental disease or defect that has impacted his ability to understand the legal proceedings or to properly assist in his defense. Dr. Szyhowski also opines that due to the fixed nature of Defendant's delusions, there was no indication that Defendant was experiencing any delusional or other psychotic symptoms at the time of the alleged offense which would have an impact on Defendant's ability to appreciate the nature, quality or wrongfulness of his actions. Neither party disputed the findings and conclusions of the Forensic Report and neither party presented any further evidence.

III.

After carefully considering the positions of the parties and the contents of the Forensic Report, the court does not find by a preponderance of the evidence, pursuant to 18 U.S.C. §

4241(d), that Defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

So ordered, the 18th day of January 2019.

A handwritten signature in black ink, appearing to read "Robert B. Jones, Jr.", written over a horizontal line.

Robert B. Jones, Jr.
United States Magistrate Judge